UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

September 21, 2009

Mr. Alan D. Risenhoover
Director, Office of Sustainable Fisheries
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Spring, MD 20910

RE: Draft Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and Draft Environmental Impact Statement (EIS), CEQ No. 20090206

Dear Mr. Risenhoover:

Pursuant to National Environmental Policy Act (NEPA) Section 102(2)(C) and the Clean Air Act (CAA) Section 309, the U.S. Environmental Protection Agency (EPA) has reviewed the referenced National Marine Fisheries Service (NMFS) Draft Environmental Impact Statement (DEIS) and proposed amendment to the Consolidated Atlantic HMS FMP. Consistent with its EIS rating system, EPA rates this proposed action as "LO," *lack of objections* because EPA traditionally defers to NMFS in technical matters pertaining to fishery management. However, EPA has included some recommendations to assist in the development of the final EIS. See the enclosed attachment.

The proposed DEIS/FMP identifies a need in the form of the NMFS determination that blacknose sharks are "overfished," shortfin mako sharks are experiencing overfishing, and the smooth dogfish may need conservation and management.

The proposed action's purpose is to: 1) implement a rebuilding plan for blacknose sharks to achieve a 70 percent probability of rebuilding stocks by 2027; 2) end blacknose and shortfin mako shark overfishing; 3) provide for the sustainable harvest of finetooth, bonnethead, and Atlantic sharpnose sharks and others; 4) prevent overfishing of Atlantic sharks; 5) consider smooth dogfish management measures in federal waters; and 6) develop a mechanism for specifying *Annual Catch Limits* (ACLs) to prevent and end overfishing and apply *Accountability Measures* (AMs) to ensure that ACLS are met.

To accomplish its purpose, the proposed action evaluated numerous alternatives including no action for each of six identified issues: 1) Small Coastal Shark (SCS) Commercial quotas (four alternatives), 2) Commercial Gear Restrictions (three alternatives), 3) Commercial Pelagic-Shark Effort Controls (eight alternatives), 4) Recreational Measures for SCS (four alternatives), 5) Recreational Measures for Pelagic Sharks (seven alternatives), 6) smooth dog fish (8 alternatives), and identified six alternatives that were considered but not further analyzed.

Small Coastal Shark Commercial quotas

The preferred alternative is to establish a new SCS quota of 56.9 metric ton (mt) dressed weight (dw), separate the blacknose shark quota from the SCS quota, establish a blacknose shark commercial quota of 14.9 mt dw, and remove shark gillnet gear as an authorized gear for shark fishing. This alternative assumes gillnet gear would not be used to harvest sharks under the Commercial Gear Restrictions' preferred alternative.

Commercial Gear Restrictions

The preferred alternative is to close the gillnet fishery to commercial shark fishing in the South Atlantic region defined from South Carolina south encompassing the Gulf of Mexico and the Caribbean Sea. This alternative would eliminate the predominant gear used to harvest blacknose sharks. Directed and incidental permit holders would be allowed to use other authorized gear to target sharks in the commercial shark fishery in this region.

Commercial Pelagic-Shark Effort Controls

The preferred alternatives are to pursue international-level action to end overfishing of shortfin-mako sharks and to promote the release of shortfin-mako sharks brought to fishing vessels alive. While the NMFS has determined the North Atlantic shortfin-mako fishery is experiencing overfishing and approaching an overfished status,[1] it believes ending overfishing and preventing an overfished status would be better accomplished through international efforts where other countries taking larger quantities of this species could participate in mortality reduction discussions.

Recommendation: In order to better reduce the risk of overfishing of the North Atlantic shortfin mako, EPA recommends including a measurable alternative, such as Alternative C4a, along with Preferred Alternatives C5 and C6. Since the social and economic impacts of C4a are expected to be minimal, including this alternative would have a positive ecological impact on shortfin mako sharks in the long term. The addition of alternative C4a would complement and enhance the efforts described in Alternatives C5 and C6.

Recommendation: As written this particular section of the DEIS/FMP does not appear to clearly support the decision to select the preferred alternatives. Consequently to assist in the development of the final EIS, EPA recommends the final EIS better clarify the issues and perceived inconsistencies identified in the enclosed comments.

Recreational Measures for SCS

The preferred alternative is to prohibit retention of blacknose sharks in recreational fisheries. While recreational fishermen may still catch this species while fishing for other

[1] P. 3-29.

species, they would be prohibited from retaining and would have to release any caught. While this measure would reduce blacknose shark landings in federal waters, there is a presumption that most recreational landings occur in state waters. Consequently, complementary measures in state waters would be important to rebuilding stocks of this species.

Recreational Measures for Pelagic Sharks

The preferred alternatives are to take action at the international level to end overfishing of shortfin mako sharks and to promote their release when brought to fishing vessels alive. As part of its efforts, NMFS would actively engage in an outreach program with recreational fishermen. The preferred alternative would not restrict the recreational harvest of shortfin mako sharks alive at haulback with exiting bag limits remaining in place.

Recommendation: As written this particular section of the DEIS/FMP does not appear to clearly support the decision to select the preferred alternatives. Consequently to assist in the development of the final EIS, EPA recommends the final EIS better clarify the issues and perceived inconsistencies identified in the enclosed comments.

Smooth Dog Fish

The preferred alternatives are to: 1) add this species under NMFS management since it is not currently a federally managed species because it had been removed from federal management after passage of the 2002 Shark Finning Prohibition Act; 2) establish a smooth dogfish quota equal to the maximum annual landings from 1998 – 2007 plus one standard deviation to allow the fishery to continue to operate with a buffer to account for any potential under-reporting of species landings; and 3) establish a separate smooth dogfish set-aside quota for the exempted fish program and for research purposes. Federal management of this species would facilitate increased information collection regarding smooth dogfish fishery landings, effort, or participants, to facilitate determination of its fishery status and corresponding appropriate fishery requirements.

Thank you for the opportunity to review this DEIS/FMP. Should you have questions regarding these comments, please contact Beth Walls (at 404-562-8309 or walls.beth@epa.gov) of my staff.

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

Enclosure - 1

ATTACHMENT

The preferred alternatives for both the commercial and recreational pelagic shark effort controls and measures are to pursue international-level action to end overfishing of shortfin-mako sharks and to promote the release of shortfin-mako sharks brought to fishing vessels alive. While the NMFS has determined the North Atlantic shortfin-mako fishery is experiencing overfishing and approaching an overfished status,[1] it believes ending overfishing and preventing an overfished status would be better accomplished through international efforts where other countries taking larger quantities of this species could participate in mortality reduction discussions.

Commercial Pelagic Shark Effort Controls

The preferred alternatives were selected over the following alternatives: "no action" where the shortfin-mako was subject to current commercial shark fishing regulations established in the 2006 Consolidated HMS FMP and subject to pelagic shark species quota, over/under harvest quotas and retention limits. And the alternatives of: establishing a shortfin-mako specific quota independent of the pelagic-shark species complex quotas; placing this species on a prohibited shark species list; and establishing a commercial size limit for shortfin-mako sharks.

Alternatives Analysis

No Action alternative

According to the DEIS the "no action" alternative (C1) was eliminated because: 1) the U.S. commercial harvest has historically been incidental and less than ten percent of the recorded total international landings and 2) because the U.S. makes a small contribution to shortfin mako shark mortality, domestic reductions on mortality would not end overfishing of the entire North Atlantic stock.

The DEIS is unclear why NMFS is basing its decision upon the entire North Atlantic stock instead of protecting the US shortfin mako shark fishery, i.e., that portion of the North Atlantic stock that is within the U.S.' boundaries/fishery.

Shortfin-Mako Specific Quota alternative

The alternative for establishing a shortfin-mako over/under harvest quotas and retention limits of the pelagic-shark species complex quotas (C2) was eliminated because the U.S. contributes to a very small portion of the overall mortality and the 2008 stock assessment did not recommend a total allowable catch for this species.

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[1] P. 3-29.

The DEIS points to the 2008 International Commission for the Conservation of Tunas (ICCAT) stock assessment as not recommending a total allowable catch necessary to stop overfishing of this shark species. And states it is difficult to determine whether setting a species-specific quota would have positive ecological benefits for the stock. However, it is unclear why it would be difficult to ascertain whether a species-specific quota limit would not be positive or the detriments for having a quota, EPA recommends an explanatory discussion be provided.

Prohibited Species List alternative

The alternative for placing this species on a prohibited shark species list (C3) could have a positive ecological impacts for this stock but it could also result in a slight increase of dead discards – how or why was not explained. This alternative was eliminated because the US does not have a directed commercial fishery for this species and does not contribute to a significant proportion of Atlantic-wide fishing mortality of shortfin mako sharks.

Commercial Size Limit alternative

The alternative for establishing gender-based size catch limits (C4a – female and C4b – male) could realize the release of an additional 5 (C4b)[2] to 89 (C4a)[3] shortfin mako sharks alive every year if a size limit were implemented. Because NMFS assumes that not all shortfin mako sharks are alive when reaching the vessel, it assumes that imposing a size limit could lead to an increase in dead discards; however, this increase does not translate into additional shark mortality.[4] This alternative was eliminated given the *relatively few number of additional live releases of shortfin mako sharks under either alternative C4a or C4b, NFMS does not prefer either alternative at this time.*[5]

Note: there appears to be a typo on page 4-38, as it states "84" more live shark releases versus page 4-36 which speaks to "89" more live shark releases annually.

It is unclear why a relatively few number of additional sharks would be released. For instance the release of 89 more live sharks in 1999 would have realized a 56 percent increase in live releases for that year. Similarly in 2006, a 68 percent increase would have been realized and in 2003 a 63% increase would have been realized. These percentages would be significant when looking at the U.S. fishery for which NOAA/NMFS is responsible for managing. See the table below converting data in Table 3.20 into percentage increases in live releases.

Year	# caught	% increase in live releases under C4a	Year	# caught	% increase in live releases under C4a
1999	159	56%	2004	411	22%
2000	456	20%	2005	187	48%
2001	395	23%	2006	130	68%
2002	415	21%	2007	215	41%
2003	142	63%	Average	279	32%

[2] P. 4-38.
[3] P. 4-36.
[4] P. 4-36.
[5] P. 4-38.

International Action preferred alternative

The alternative to pursue international-level action to end overfishing of shortfin-mako sharks was selected as a preferred alternative despite the potential negative ecological impacts it could have for the U.S. shortfin mako fishery in the short term because any management recommendations adopted at the international level to end overfishing could have positive ecological impacts in long term. Because U.S. commercial harvest has historically been less than ten percent of the recorded international landings, of the small U.S. contribution to mortality, and domestic reductions would not end overfishing of the entire North Atlantic stock, NMFS prefers to work internationally where other countries having larger takes of shortfin mako sharks could participate in mortality reduction discussions.

The DEIS appears to assume that ICCAT is able to act timely enough to prevent an NMFS-determined fishery experiencing overfishing from achieving an overfished status without giving a basis this assumption's appropriateness. Furthermore, the DEIS does not appear to have presented an association between the international fisheries' impact upon the U.S. North Atlantic shortfin mako fishery as a causal factor behind NMFS' determination that this species is experiencing overfishing and approaching an overfished status.

Promote Release of Live Sharks alternative

The preferred alternative to promote the release of shortfin-mako sharks brought to fishing vessels live (C6) is expected to have slightly positive or neutral ecological benefits because 68.9 percent are brought to the vessel alive and could be released.[6] However since this alternative could result in the reduction of fishing mortality, NMFS prefers this alternative.

Given the high value of the meat, the DEIS is unclear what the incentive is for the fishermen to implement this proposed catch and release alternative. The shortfin-mako shark species is valued for its high-quality meat, its fins are marketed for shark-fin soup in the Far East, its liver oil is extracted to make vitamins, its jaws and teeth are sold for ornaments and trophies, and the hides are processed into leather. The DEIS states that despite no directed shortfin mako shark fisheries exist, PLL discards of this species were negligible since the meat of this species is so highly valued.

U.S. contributes very little to shortfin mako shark mortality in the North Atlantic because there is no directed fishery.

As the primary justification supporting its preferred alternatives and eliminating the other alternatives, the DEIS repetitively states that in comparison to other ICCAT contracting parties, the U.S. contributes very little to shortfin mako shark mortality in the North Atlantic because there is no directed fishery.

It is unclear how the nonexistence of an U.S. direct shortfin-mako fishery means that the U.S. contributes very little to shortfin-mako shark mortality in the North Atlantic or within the

[6] P. 4-40.

U.S.' fishery portion of the North Atlantic. Furthermore is unclear whether any of the ICCAT contracting parties actually have direct shortfin-mako fisheries. Presumably if none of the ICCAT contracting parties have a direct shortfin-mako fishery, then all ICCAT contracting parties are catching this species as by-catches of their pelagic fisheries, particularly those directed at tunas and swordfish.

Moreover because the shortfin mako is closely associated with swordfish, a directed fishery for shortfin mako would likely result in high by-catch levels of swordfish and possibly bluefin tuna, both of which are directed fisheries. In other words, the same fishing gear used to target swordfish and bluefin tuna which realizes a significant by-catch of shortfin-mako would likely be used to target shortfin mako should such a direct shark fishery officially exist. Furthermore despite being a by-catch, this species is rarely discarded because of its high commercial value; consequently it is unclear how the shortfin mako shark's status would be any different if a US directed fishery officially existed.

Furthermore since the pelagic longline (PLL) fishery is effectively a multi-species fishery and the US has a direct swordfish and tuna fishery with significant by-catches of shortfin mako as compared to recreational catches[7] and which because of the high value of its meat is rarely discarded, it is unclear from the DEIS as written that the U.S. shortfin-mako by-catch contributes less to this species mortality than that alleged by the other ICCAT contracting parties within U.S. waters, i.e., the economic exclusive zone (EEZ).

According to the DEIS, the U.S. fleet operates in the north Atlantic area;[8] the NMFS has determined the North Atlantic shortfin mako shark population to be approaching an overfished status;[9] and the U.S. PLL fleet accounts for less than 0.5 percent of the tuna and swordfish landings from the Atlantic **south** of the 5 degrees N. latitude[10] implying a similar insignificant by-catch of shortfin mako sharks when compared to other international fleets. Since ICCAT defines the North Atlantic shortfin mako shark population as that lying above 5 degrees N. latitude,[11] the DEIS does not appear to have described what percent of the landings of tunas and swordfish from the Atlantic **north** of the 5 degrees N. latitude the U.S. PLL fleet is accountable for landing.

Table 3.20[12] compares the *nominal* catches of shortfin mako shark for 21 countries. It is unclear why "nominal" data would be relied upon in making fishery decisions or what is meant by "nominal." While this table clearly indicates Spain as the top shortfin-mako shark predator, followed by Portugal and Nambia in terms of nominal catches, the US appears to be tied with Japan for the number three spot of the top six countries with the most mako landings for the past 8 years (2000 – 2007). See table below which is a percent comparison of the top six countries compiled from Table 3.20's data.

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[7] Table 4.15, p. 4-39.
[8] P. 3-85.
[9] P. 1-14.
[10] P. 3-85.
[11] P.4-49.
[12] P. 3-88.

Year	Atlantic Total	% U.S.	% Nambia	% Portugal	% Spain	% Brazil	% Japan	% total
1991	1210	25	0	26	0	0	5	56
1992	1302	29	0	17	0	0	9	55
1993	2957	32	0	27	0	0	4	63
1994	2952	22	0	22	0	0	4	48
1995	4866	35	0	15	0	0	3	53
1996	2771	17	0	28	0	3	11	59
1997	5577	7	0	9	68	3	6	93
1998	5275	7	0	8	63	0	0.6	78.6
1999	4002	4	1	11	73	0.7	5	89.7
2000	4858	9	9	15	57	5	8	102
2001	4683	8	0	11	62	9	3	93
2002	5380	8	7	9	53	4	11	92
2003	7370	2	37	25	45	4	5	118
2004	7510	5	37	6	55	3	13	119
2005	3801	5	0	36	61	11	0	113
2006	3346	4	0	43	77	6	0	130
2007	6425	3	16	30	38	0.6	8	95.6
2000 – 2007 % average		6	13	22	56	5	6	

Table 3.20 is unclear whether its data is representative of only the North Atlantic shortfin mako shark population fishery or is inclusive of the South Atlantic and Mediterranean fisheries. Additionally, it is unclear whether it represents commercial fishery landings, recreational landings, or both.

The described justification for the selection preferred alternatives and for the elimination of other alternatives appears to be based on the U.S.' *minor* contributions to the North Atlantic shortfin-mako mortality. Since this FMP appears to cover Atlantic highly migratory species, and as described in the DEIS, the Atlantic area appears to encompass the South Atlantic, Gulf of Mexico, and Caribbean Sea, it is unclear why the DEIS appears to rely only upon U.S. contributions to North Atlantic shortfin-mako mortality.

Furthermore because this shark species reportedly ranges from the Gulf of Maine to southern Brazil including the Gulf of Mexico and the Caribbean, information on the U.S.' cumulative contribution to this species' mortality in the South Atlantic, Gulf of Mexico and the Caribbean would be expected to be factored into the preferred alternative selections. While it is clear that the ICCAT designates three separate populations of this species for purposes of its research and assessments[13] and it was the North Atlantic species NMFS determined to be approaching overfished status; however the DEIS is unclear as to whether the North Atlantic population is a truly isolated and distinct population independent of the South Atlantic population.

[13] P. 1-14.

Because no reasoned rational appears to have been expressed to explain why the one alternative (C4) which could positively benefit a species determined to be experiencing overfishing and approaching an overfished status was not selected as one of the preferred alternatives, EPA recommends NMFS consider adding the alternative C4a to its preferred alternatives for the commercial pelagic-shark effort controls.

Most of the shortfin mako shark landings are attributed to the recreational fishery

The DEIS also justifies its selection of Commercial Pelagic-Shark Effort Controls preferred alternatives based on the allegation that most of the shortfin mako shark landings were attributable to the recreational fishery, whose catches in numbers peaked in 1985 to about 80,000 sharks[14] citing Table 4.15 which provides estimates of commercial and recreational landings.[15] However, the data provided in Table 4.15 appear to contradict this finding of recreational fisheries exerting a greater pressure than commercial on the shortfin mako sharks.

During 1982 – 1991, no commercial landings data exist for the shortfin mako sharks. During 1992 – 2007, the number of commercial shortfin mako shark landings appears to exceed those of recreational landings for 11 of this 16-year period. While the recreational landings exceeded commercial landings for 5 years, in 1998 the recreational landings only exceeded commercial landings by 2 percent. Furthermore over the 15 year period (1993 – 2007) where commercial fishing records are available, there were only three years (1993, 1995, and 2000) where the recreational dressed weight totals exceeded the dressed weight totals of the commercial landings.

Table 4.15 does not provide a comparison between commercial whole weight with recreational, which may be more informative than comparing dressed weight totals as there may be variations in how sharks are dressed. Furthermore it is unclear whether this table provides international data, US-specific fishery data, North and/or South Atlantic data. Additionally, the table only provides average weights of sharks landed. The average metric provides limited information as it simply represents the middle between outliers. A median weight comparison for the two fisheries may be more informative, particularly as an indicator as to whether one type fishery may be more detrimental to this species reproduction potential than the other and a corresponding need for setting size limits as described in alternatives C4a & b and E2a & b.

Recreational Measures for Pelagic Sharks

The preferred alternatives are to take action at the international level to end overfishing of shortfin mako sharks and to promote their release when brought to fishing vessels alive. As part of its efforts, NMFS would actively engage in an outreach program with recreational fishermen. The preferred alternative would not restrict the recreational harvest of shortfin mako sharks alive at haulback with exiting bag limits remaining in place.

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[14] P. 4-38.
[15] P. 4-39.

The preferred alternatives were selected over the following alternatives: "no action" where the current recreational retention and size limits will be retained, increasing the minimum size limit by establishing gender-based size catch limits (E2a – female and E2b – male), and prohibiting the landing of shortfin mako sharks in recreational fisheries, e.g., catch and release only.

No Action alternative

According to the DEIS the "no action" alternative (E1) was eliminated because *due to the low numbers of shortfin mako sharks landed in the commercial fishery, it is unlikely that maintaining the no action would have significant negative ecological impacts on the shortfin mako shark.*[16]

The DEIS is unclear how the commercial landings aspect influences the recreational requirements, particularly since the ICCAT's assessment determined that most of the shortfin mako shark landings are associated with the recreational fishery.[17]

Recreational Size Limit alternative

The DEIS is unclear that if most of the landings of this species are attributed to the recreational fishery, why this alternative (E2a and/or E2b) which is similar to the commercial size limit alternative would not be included since an increase in catch-size limits could have significantly positive ecological impact upon this species as it would lead to a large majority of the recreationally caught shortfin mako sharks to be released alive.[18]

[16] P. 4-47.
[17] P. 4-38.
[18] P. 4-49.